

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**August 21, 2012**

**The Rhode Island Ethics Commission held its 11th meeting of 2012 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, August 21, 2012, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair   John D. Lynch Jr.**

**Frederick K. Butler Edward A. Magro**

**John M. LaCross          James V. Murray**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:00 a.m. the Chair opened the meeting. The first order of business was approval of minutes of the Open Session held on July**

**17, 2012. Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it was**

**VOTED: To approve minutes of the Open Session held on July 17, 2012.**

**AYES: James V. Murray; Frederick K. Butler; John M. LaCross; Ross Cheit.**

**ABSTENTIONS: Edward A. Magro; John D. Lynch, Jr.**

**The next order of business was recognition of former Commissioner J. William W. Harsch. Chair Cheit thanked Mr. Harsch for his four years of dedication and honorable, volunteer service to the Commission. Chair Cheit commended Mr. Harsch's long career in public service and wished him well as he embarked on a different form of public service in the future.**

**Mr. Harsch stated that he was grateful for this recognition and that he enjoyed his work with the Commission. He explained that he resigned in order to run for public office. He informed that he will work with good government groups to restore the jurisdiction of the Ethics Commission. He praised the volunteerism of the Ethics Commission and stated that the Commission's professional staff was outstanding.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:**

**Mario Carlino, a member of the Board of the Narragansett Bay Commission, a state appointed position, requesting an advisory opinion regarding whether the Code of Ethics prohibits his participation in discussion and voting relative to construction projects involving DiGregorio, Inc., given that his godfather's son has an ownership interest in the business.**

**Staff Attorney DiLibero presented the Commission Staff recommendation. The Petitioner was present. In response to Chair Cheit, the Petitioner stated that he could be impartial when participating in matters involving DiGregorio, Inc. Upon motion made by Commissioner Butler and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Mario Carlino, a member of the Board of the Narragansett Bay Commission.**

**The next advisory opinion was that of:**

**Brian M. Daniels, the Director of Performance Management in the Office of the Governor, a state employee position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from accepting a position as the Director of Performance Management within the newly created Office of Management and Budget (“OMB”) in the Department of Administration.**

**Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Gramitt proposed an amendment to the penultimate paragraph on page two of the draft opinion. He stated that the Petitioner informed him that it should read instead that “the Governor and the Director of Administration, who has appointing authority over OMB, have asked the Petitioner to serve as the OMB’s Director of Performance Management.” In response to Commissioner LaCross, Staff Attorney Gramitt stated that the Petitioner’s position is not a protected position and he could be replaced in the event of a new gubernatorial administration. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an advisory opinion, as amended and attached hereto, to Brian M. Daniels, the Director of Performance Management in the Office of the Governor.**

**The next advisory opinion was that of:**

**Peter Baute, M.D., a New Shoreham Town Council member, a municipal elected position, requesting an advisory opinion regarding how to manage and avoid potential conflicts of interest involving the Town Council's consideration of matters involving Block Island Health Services, a non-profit medical center which receives an annual subsidy from the Town of New Shoreham, given that he is currently the interim administrator of Block Island Health Services.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Peter Baute, M.D., a New Shoreham Town Council member.**

**The next advisory opinion was that of:**

**Rose Marie Cipriano, a member of the Smithfield Financial Review Commission, a municipal elected position, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from being a plaintiff in a lawsuit against the State of Rhode Island and the Employees' Retirement System of Rhode Island.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Legal Counsel Alves**

recused. Chair Cheit commented that this was an example of how important the facts are in distinguishing a real conflict from what looks like a conflict under the Code of Ethics. Upon motion made by Commissioner Murray and duly seconded by Commissioner LaCross, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Rose Marie Cipriano, a member of the Smithfield Financial Review Committee.

The next advisory opinion was that of:

George Muksian, Esq., Chief Legal Counsel for the Rhode Island Department of Elementary and Secondary Education, requests an advisory opinion regarding whether members of a governing body or board of a charter school are persons subject to the provisions of the Code of Ethics.

Staff Attorney Stewart presented the Commission Staff recommendation. Forrest Avila, Esq., legal counsel to the Commissioner of Elementary and Secondary Education, appeared on the Petitioner's behalf. In response to Commissioner Butler, Staff Attorney Stewart informed that current levels of compliance among charter school board members is very low. Staff Attorney Gramitt added that charter school board members are not currently on the Commission's mailing list for the annual financial disclosure form. He stated that the Commission would not initiate complaints against

persons who were not forwarded a form. Mr. Avila stated that the Commissioner of Elementary and Secondary Education will work with Commission Staff to bring charter school board members into compliance. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to George Muksian, Esq., Chief Legal Counsel for the Rhode Island Department of Elementary and Secondary Education.

The final advisory opinion was that of:

George McKinnon, a member of the Smithfield Zoning Board of Review, a municipal appointed position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Zoning Board's consideration of a special use permit application involving a coffee shop that is his employer's tenant's competitor.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Legal Counsel Alves recused. Upon motion by Commissioner Lynch and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to George McKinnon, a member of the Smithfield Zoning Board of Review.

The next order of business was discussion of and potential vote on Common Cause Rhode Island's request to initiate rulemaking relative to the disclosure of travel/gifts. Staff Attorney Gramitt stated that he provided the Commission with an amended regulation proposal and a memorandum addressing questions and concerns raised by the Commission at the last meeting. With respect to the regulatory language, he explained that he made a few changes. First, the regulation would require a public official to disclose travel expenses from any person "or entity," taking into account that the Code's definition of person may not include certain non-profit organizations. Second, guided by the language of section 5(e), travel provided by a state or municipal agency, by which the public official is employed or which he represents, will not have to be disclosed.

Staff Attorney Gramitt explained that he did not include in-state travel based on Common Cause's request, which was looking to cover out-of-state travel. Additionally, he stated that he did not add language to cover instances when a person is provided travel for a speaking role at an event. He suggested that because the proposed regulation is aimed merely at disclosure there is no need to distinguish between situations where travel may be considered as a partial or full reimbursement for speaking.

In response to Chair Cheit, Legal Counsel Alves stated that it is very clear that the Commission has the authority to enact this regulation.



He opined that a travel disclosure rule is within the scope of the Commission's powers under Art. III, sec. 8 of the state constitution because it is in furtherance of transparency.

Commissioner Lynch suggested requiring the disclosure of all travel and meals, without an in-state or out-of-state distinction. Staff Attorney Gramitt replied that such a rule would become a requirement for disclosure of all gifts, not just those from interested persons. He added that in-state travel expenses are more likely to be provided by an interested person and would be prohibited by the gift regulation.

Commissioner Lynch suggested replacing "reason to believe" with "more likely than not" because it is easier to apply. He added that with "reason to believe" it could always be argued that there was a reason to believe that the public official would not have received the travel but for their public office. Staff Attorney Gramitt replied that his point was well taken and that as a prosecutor he would not want a standard that a respondent could argue was too vague. Chair Cheit directed Staff Attorney Gramitt to consider this and provide some suggestions relative to the standard at the next meeting.

Chair Cheit questioned whether the regulation should have a monetary threshold. Staff Attorney Gramitt said that a dollar amount can easily be added at the Commission's direction. Chair Cheit said that he would be comfortable with something around \$200 or \$250. John Marion, on behalf of Common Cause Rhode Island, stated that

this regulation request was aimed at big conferences in resort locations. He stated that his Board had previously discussed a monetary threshold of \$100 and that he would be satisfied with the \$250 recently suggested. It was also discussed whether this regulation, without a monetary threshold, would require reporting of attendance at events in Seekonk or nearby casinos, which may be trivial. In response to Chair Cheit, Mr. Marion replied that it was not necessary for the regulation to have a dollar amount.

Commissioner LaCross stated that high priced events could occur in state, for example at Carnegie Abbey or Shelter Harbor. Staff Attorney Gramitt stated that he had focused on the issue raised by Common Cause, which is disclosure of out-of-state travel and related expenses. Chair Cheit agreed on starting small given that, at this point, it is unclear how big of a problem this is. Mr. Marion encouraged the Commission to start the rulemaking process in order to hear from other groups and public officials.

Chair Cheit directed Legal Counsel Alves to provide information to the Commission at the next meeting regarding moving forward with rulemaking and how many options can be considered at one time.

Mr. Marion noted that lobbying disclosure laws are similar because they require lobbyists to disclose the amount that is being spent, but do not prohibit the spending of money. He stated that it is valuable to society to know who is trying to influence policy makers and how

**much money is spent trying to influence them.**

**Commissioner Butler stated that disclosure for its own sake causes him some concern. He suggested that his concern would be abated somewhat if there were a higher standard. He recognized that disclosure has its own value and stated that he would be interested to learn more about this in rulemaking. Chair Cheit directed Staff Attorney Gramitt to provide both the standard to be applied and possible monetary values for revisions to be presented at the next meeting. Chair Cheit continued this matter to the next meeting.**

**The next order of business was a discussion regarding statutes of limitations for ethics violations. Senior Staff Attorney D'Arezzo stated that she reviewed twenty-two (22) other state jurisdictions and found that sixteen (16) had a statute of limitations. She informed that the longest statutory limit was six (6) years and the shortest was twelve (12) months. She stated that she contacted the agencies that do not have a statute of limitation. She explained that, across the board, those agencies did not find the absence of a statute of limitation to be an issue. She stated that none of the agencies could recall litigation or a respondent raising such a defense. She informed that, uniformly, other agencies informed that they would not want to prosecute a ten (10) year old case given the possible difficulty in proving the case. She stated that each agency handles matters on a case-by-case basis and the commissions had broad authority to adjudicate complaints or dismiss complaints for lack of proof.**

Chair Cheit questioned whether a case would go forward that was twelve (12) years old if the prosecutors knew they could prove it. Senior Staff Attorney D'Arezzo responded that none of the agencies reported having faced such a situation. She stated that no one could recall a case going back ten (10) years and noted that most allegations were two (2) to three (3) years old. She noted that New York and New Jersey were unique because, although they have no time limit with regard to current state officials and employees, each has a limitation period for pursuing a complaint against an official or employee after they have separated from state service. She concluded by stating that she could ascertain no issues in the jurisdictions, similar to ours, that did not have a statute of limitation.

Legal Counsel Alves informed that R.I. Gen. Laws § 9-1-13(a), the ten (10) year catch-all statute of limitation for civil actions in Rhode Island, applies to Ethics Commission proceedings. He stated that the Commission has the authority under the state constitution to enact a limitation if it wishes to do so. He referred to *State v. Levesque*, in which the Rhode Island Supreme Court stated that the Ethics Commission was engaged in a civil proceeding.

Commissioner Murray stated that he was concerned that, even though there has never been an issue, the absence of a statute of limitation could still be a problem in the future. He suggested considering a rule that limits time after the act was committed or after

the official has left public office. Chair Cheit stated that a limitation on time after the official has left office is interesting because what is the purpose of prosecuting someone who is no longer subject to the Code. Commissioner Lynch noted that the ten (10) year catch-all for civil actions is a long time. He suggested a shorter limit, maybe three (3) or four (4) years, and would consider a limitation of time, perhaps two (2) years, after an official has left the position.

Legal Counsel Alves advised that the Commission could adopt a statute of repose, which is clearly a substantive right, through rulemaking. He suggested not having a tolling or discovery provision. In response to Commissioner Butler, Senior Staff Attorney D'Arezzo stated that the oldest set of facts she could recall was in the Irons case where the first instance of conduct went back to a little over four (4) years before the complaint was filed. In further response, she stated that she has prosecuted complaints in which the respondent was out of office but could not recall any against an individual who had been out of office more than two (2) years.

Chair Cheit directed staff to include Senior Staff Attorney D'Arezzo's memorandum in the packet for the next meeting and continued the matter to the next meeting.

The next order of business was the Director's Report. Executive Director Willever reported that there are five (5) complaints and one (1) litigation matter pending. He also stated that fourteen (14) APRA

**requests were granted since the last meeting.**

**At approximately 10:40 a.m., upon motion made by Commissioner Lynch and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**a) Motion to approve minutes of Executive Session held on July 17, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**b) Discussion re status of pending litigation: Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et. al., C.A. No. PC11-6938, pursuant to R.I. Gen. Laws § 42-46-5(a)(2).**

**The Commission reconvened in Open Session at approximately 10:42 a.m. Chair Cheit reported that the Commission took the following actions in Executive Session:**

**(1) Voted to approve the minutes of the Executive Session held on July 17, 2012.**

**[Reporter's Note – The vote was as follows:**

**AYES: James V. Murray; Frederick K. Butler; John M. LaCross; Ross Cheit.**

**ABSTENTIONS: Edward A. Magro; John D. Lynch, Jr.]**

**(2) Received an update on the litigation matter, Joseph S. Larisa, Jr.**

**v. Rhode Island Ethics Commission et. al., C.A. No. PC11-6938.**

**The next order of business was New Business and general comments from the Commission. Chair Cheit noted that the Commission now only has eight (8) members. He urged the Commissioners to be conscientious about their attendance and encouraged them to timely inform Staff of their schedules in order to ensure quorums for upcoming meetings.**

**At 10:44 a.m., upon motion made and duly seconded, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

---

**Ross Cheit**

**Chair**